No. 80-332

Supreme Court of the United States
OCTOBER TERM, 1980

JAMES A. RHODES, et al.,

Petitioners,

vs.

KELLY CHAPMAN, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF THE AMERICAN MEDICAL ASSOCIATION AND THE AMERICAN PUBLIC HEALTH ASSOCIATION

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF THE AMERICAN MEDICAL ASSOCIATION AND THE AMERICAN PUBLIC HEALTH ASSOCIATION

The American Medical Association and the American Public Health Association respectfully move this Court for leave to file a brief *amicus curiae* in this case. We make this motion subsequent to seeking consent from Petitioner's attorneys. By letter dated January, 1981 such consent was refused.

IDENTIFICATION AND INTEREST OF THE AMICI AMERICAN MEDICAL ASSOCIATION

The American Medical Association (AMA) is the national professional association of physicians. Founded in 1846, the Association has a current membership of 231,000 physicians and serves as the representative of the medical profession in the United States and its Territories.

A sizeable portion of the Association's resources and efforts have been devoted through the years to the develop-

ment of programs and services that would meet the medical and social needs of all segments of the American population.

In 1972 the AMA conducted a nationwide survey of local jails which revealed the difficulties of providing adequate medical care and health services in jails. In 1973 the AMA appointed a National Advisory Committee composed of experienced medical and correctional representatives to assist in developing a program to improve medical care and health services in correctional institutions.

As a result of that Committee's efforts, the Association in 1974 in conjunction with the Law Enforcement Assistance Administration (LEAA), an agency of the U.S. Department of Justice, began the AMA program to improve medical care and health services in correctional institutions.

The AMA Jail Project was originally and still is aimed primarily at improving medical care and health services for persons held in jails through the development of minimum standards and a subsequent voluntary jail health services accreditation program.

In 1978, the AMA entered into a subcontract with the Michigan Department of Corrections under a separate LEAA grant to develop Standards for Health Services in Prisons, to assist in the training of correctional administrators and health care personnel, and to develop and test an accreditation instrument for prison health care systems.

Through an award of accreditation, the AMA and the respective state medical society recognize that a particular facility has met nationally recognized minimum standards designed to promote adequate health care. Support for these standards has come from both medical organizations and organizations concerned with law enforcement in the

public interest, such as the American Bar Association, the American Correctional Association, and the National Sheriffs Association, all of which have been involved in the program from its outset.

In late 1978 the Comptroller General of the United States recommended to the Attorney General of the United States that a federal strategy be developed and implemented to bring correctional health care nationwide into compliance with the *AMA Standards.* Governmental bodies in eight states[1] have incorporated the *AMA Standards,* in whole or in part into statutes and regulations governing correctional facilities. At least two federal courts have approved consent decrees requiring that correctional institutions bring themselves into compliance with the *AMA Standards. Brown* v. *Beck,* slip. opinion at 6, Civil Action No. 177-56 (S.D. Ga., Augusta Div. May 2, 1978) [Richmond County Jail] see reference at 481 F.Supp. 723 (S.D. Ga. January 9, 1980); *Burnim* v. *Bell,* Plan for Compliance at 4, Civil Action No. C-77-453 (W.D. Wash. June 12, 1979) [King County Jail Correctional Facilities.] In addition, *AMA Standards* were cited favorably in *Ahrens* v. *Thomas,* 434 F.Supp. 873 at 888 (S.D. Mo. 1977), *aff'd,* 570 F.2d 286 (8th Cir. 1978).

The AMA's focus on the health care of prisoners has over the years caused us to become increasingly concerned over environmental factors such as overcrowding which have a demonstrable adverse impact on the health status of inmates. From its experience in dealing with the health needs of inmates, and its concern for the prevention of disease and the maintenance of health in all segments of the American population, the AMA seeks to bring to this Court's attention the adverse consequences of long term overcrowding on inmates' physical and mental health.

[1]California, Maryland, Michigan, Ohio, Oklahoma, South Carolina, Texas, and Washington.

AMERICAN PUBLIC HEALTH ASSOCIATION

The American Public Health Association is a non-profit corporation, organized in 1872, consisting of over 30,000 members nationwide. Its object is to protect and promote personal and environmental health. The organization has a large and diverse membership including directors and top level officials in state and local health departments, professors and administrators of schools of public health, and high ranking officials in various federal agencies. Within this membership both professional health workers and consumers act in a leadership role to develop a national policy for the provision of equitable and quality health care for all citizens. The health of those who are incarcerated has been a major area of interest and concern to the Association for many years.

The APHA is vitally concerned with the issue of prison overcrowding because of the demonstrable adverse effects of overcrowding on physical and mental health. In pursuing its goals the APHA has addressed this issue by promulgating public health standards for prisons which include minimum space per person standards. These call for the use of single cells with a minimum of 60 square feet per person.[2]

The Association bases its standards upon the substantial body of empirical findings in the fields of medicine, psychology, psychiatry and epidemiology, that forced long term crowding produces physical and mental injury.

Those prison standards were developed beginning in 1972 by a task force of fifty persons drawn from the health professions. The standards were based upon several overriding principles; foremost among those was the "intent of the American Public Health Association . . . not to promote special treatment for this population but rather to insure that their incarceration does not compromise their

[2]*Standards for Health Services in Correctional Institutions: American Public Health Association* (1976) § VI(3).

health care . . ."[3] Secondly, the standards are not goals which are simply desirable, but are set forth as the minima required to safeguard physical and mental health.

The standards of the APHA have been cited with approval by numerous experts and federal courts in formulating remedies for unconstitutional prison conditions. See *Battle* v. *Anderson,* 564 F.2d 288, 395 (10th Cir. 1977) [Oklahoma State Penitentiary]; *Ramos* v. *Lamm,* 485 F.Supp. 122, 154 (D. Colo. 1979), *aff'd in relevant part, reversed and remanded in part* (10th Cir. 1980), [Colorado State Penitentiary]; *Palmigiano* v. *Garrahy,* 443 F.Supp. 956, 961, 990 (D.R.I. 1977) [Rhode Island Adult Correctional Institutions]; *Ruiz* v. *Estelle,* slip op. at 16, no. 21, Civ. Action No. H-78-987 (S.D. Texas, Houston Div., Dec. 10, 1980) [all Texas Department of Corrections institutions].

In view of the Association's expertise in the field of public health and its long term commitment to the development of standards that protect the physical and mental health of incarcerated persons the Association seeks to bring to the Court's attentions the health implications of long term overcrowding, and the empirical basis for the sixty (60) square feet per person standard.

Respectfully submitted,

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[3] *Id.* at *vii.*

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BRIEF OF THE AMERICAN MEDICAL ASSOCIATION AND THE AMERICAN PUBLIC HEALTH ASSOCIATION

SUMMARY OF ARGUMENT AND

STATEMENT OF THE CASE

The district court derived its holding that the long term overcrowding at the Southern Ohio Correctional Facility violated the Eighth Amendment from a careful review of the totality of conditions at the prison. The holding was based upon a finding that, on the facts taken as a whole, the sustained overcrowding needlessly caused physical and mental harm to the prisoners, *Chapman* v. *Rhodes,* 434 F. Supp. at 1020, and violated contemporary standards of decency as reflected in the standards of various professional organizations. 434 F. Supp at 1021.

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This Court's historic solicitude for the values protected by the Eighth Amendment has focussed on the significance of the "contemporary standards of decency" embodied in that Amendment. *Estelle* v. *Gamble,* 429 U.S. 97, 103 (1976). In filling in the content of those standards of decency this Court has looked to the standards of professional organizations. *Estelle* v. *Gamble,* 429 U.S. at 103, n. 8; *Hutto* v. *Finney,* 437 U.S. 678, 683 (1978).

In the context of overcrowding, the minimum space per person standards developed by the APHA and other professional organizations such as the U.S. Army, the American Correctional Association, the U.S. Department of Justice, and the National Sheriffs Association, are not simply desirable goals, but are minima required to safeguard physical and mental health. These standards which generally call for at least 60 square feet of space per person are based upon the broad consensus of epidemiological, medical and psychological findings that long term overcrowding causes and accelerates the spread of communicable disease and results in the increased occurrence of stress-induced mental disorders, tension, aggression and physical violence.

The district court's opinion properly recognized that the standards of professional organizations were an important source to consider in assessing the contemporary standards of decency. And the court correctly held, based on the record as a whole and the work of behavioral scientists, and public health officials, that minimum space requirements are necessary to prevent the needless infliction of mental and physical injury caused by long term overcrowding.

RELEVANT CONSTITUTIONAL PROVISION

United States Constitution, Amendment VIII:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARGUMENT

I. THE MINIMUM SPACE PER PERSON STANDARDS HAVE BEEN DEVELOPED TO PROMOTE THE DECENT TREATMENT OF PRISONERS BY MINIMIZING THE ADVERSE EFFECTS OF OVERCROWDING ON THEIR PHYSICAL AND MENTAL HEALTH.

Crowding both in and out of prison is of enormous concern to public health officials and behavioral scientists because of its significance as a factor directly affecting mental and physical health.[1] In 1938, the APHA first promulgated its standard of 70 square feet per person for sleeping purposes for residential housing of free world persons. This standard was reaffirmed in 1945 and has remained the same to this date.

In the correctional field the APHA, working in conjunction with correctional officials, promulgated a standard of 60 square feet per prisoner in a cell (with a minimum eight foot ceiling and 500 cubic feet per person).[2] This standard is based upon

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[1]Crowding is often used to refer either to an increase in spatial density (a reduced square footage per person) or an increase in social density (an increased number of persons in a given space). The adverse effects of crowding generally are more pronounced when social density is increased – that is, when more people are forced together, even if the square footage per person remains the same. In other words, from a public health viewpoint, it is better to have one person in a 50 square foot cell than two persons in a 100 square foot cell. Thus, double celling two persons in a 60 square foot cell constitutes not only an increase in spatial density but a marked increase in social density as well.

[2]*Standards for Health Services in Correctional Institutions: American Public Health Association* (1976): APHA Space Requirements are as follows: *"Principle:* Adequate space should be provided for cells, dormitories, dining rooms, recreation areas, visiting areas, and any other places where inmates sleep, live, work or play. *Public Health Rationale:* Adequate space is necessary to reduce stress, carry out certain tasks, provide for privacy where and when indicated, and contribute to comfort and mental health. *Satisfactory Compliance:* Sufficient space shall be provided to make use of the room or area as intended without crowding, confusion or conflict. Cells shall

substantial empirical data demonstrating the profound physical and mental injury that can result from sustained crowding. Other professional organizations likewise recognize that minimum space requirements are essential to maintain mental and physical health[3] The U.S. Army has adopted a 72 square foot standard;[4] the British Army[5] and the Canadian Army[6] have adopted a 60 square foot standard.

U.S. Army regulations prescribe 72 square feet of space per enlisted man, exclusive of stairs, halls, utility space, latrines, and similar facilities. Regulations authorize exceptions to be made only by the Department of the Army.

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be designed for the use of one inmate; dormitories are discouraged as are double deck bunks. Single cells shall provide a minimum of 60 sq. ft., 8 ft. ceiling, and 500 cu. ft. per person, and where dormitories are permitted, a minimum of 75 sq. ft., 10 ft. ceiling, and 600 cu. ft. per person. Day rooms shall provide space equal to at least 50 percent of the cells and dormitories; dining areas 9 to 12 sq. ft. per inmate. . . ."

[3]See Commission on Accreditation for Corrections, *Manual of Standards for Adult Correctional Institutions* § 4142 (1977) ["There is one inmate per room or cell, which has a floor area of at least 60 square feet, provided inmates spend no more than 10 hours per day locked in, exclusive of counts; when confinement exceeds 10 hours per day, there are at least 80 square feet of floor space]; U.S. Department of Justice, *Federal Standards for Prisons and Jails*, §§ 2.02, 2.04, 2.05 (1980) ["In *long term institutions,* there is one inmate per cell or room. . . Single rooms or cells have at least 60 square feet of floor space. Where an inmate is required to spend more than 10 hours per day in the room or cell there are at least. . . 80 square feet in *long term institutions.* National Sheriffs' Association, *A Handbook on Jail Architecture* 63 (1975) ["Single occupancy detention room should average 70 to 80 square feet in area."] All of these minimum space standards assume that other minimum standards, e.g. for sanitation, lighting, ventilation, medical, and psychiatric care are being met.

[4]Army Regulations 210-16 (1975).

[5]*Handbook of Army Health* (1950) (W.O. Code No. 5961 26/Pubs/6333, Mar. Office, Great Britain.)

[6]Report to the Secretary of the [U.S.] Army Concerning Medical Implications of Space Allowances in Troop Housing" (April 1952) [hereinafter cited as "Medical Implications of Space Allowances"].

> It is accepted without question that such exceptions are command decisions to meet emergency circumstances and that a recognized calculated risk is being taken when such decisions are made. *Under conditions of rapid expansion or total mobilization a minimum of 60 square feet has been agreed upon. The Surgeon General supports these criteria. For medical reasons they are the lowest which may be used without unnecessary risk of abnormal disease incidence.*[7] (emphasis added)

While the Army does not prohibit double bunking *per se,* for health reasons it is permissible only where "the space provided for each man meets the requirement of 72 square feet. . . ."[8]

U.S. Army Regulations for military prisoners similarly call for a standard space allocation of 72 square feet of sleeping space for each prisoner.[9] A reduced allocation of 55 square feet is authorized only when "priority conditions exist that preclude the use of standard allocations.[10] Under emergency conditions a lower standard is allowed but only for seven days:[11]

> Under conditions of temporary peak confinement facility population periods, not to exceed *seven consecutive days,* an *emergency minimum allocation* of 40 square feet of sleeping space per prisoner is authorized, excluding close confinement.

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[7] *Id.* Incl. 1, at 2-3. The same public health rationale applies where prisoners are placed in close proximity for extended periods of time because of overcrowding.

[8] *Id.* at Incl. 1, p. 3.

[9] Army Regulation 190-47 § 3-3(a) (1975).

[10] Army Regulation 190-47 § 3-3(b) (1975).

[11] Army Regulation 190-47 § 3-3(b) (1975). The only exception to these regulations is for inmates in close confinement (segregation). These are single cells of 48 square feet, A.R. 190-47 § 3-1(b), and confinement shall generally not exceed 15 days, A.R. 190-47 § 9-16(d) (1975).

Commanders must be prepared to accept the possible increased incidence of respiratory disease and disciplinary problems under these conditions. (emphasis added)

A. The Minimum Space Per Person Standards Are Based Upon Empirical Medical, Psychological, And Epidemiological Findings That Mental And Physical Injury Are Caused By Sustained Crowding In Prisons And Other Institutions.

The significance of the square footage standards promulgated by the APHA, the U.S. Army and other organizations is that they are *not* intuitive, normative, or idealistic notions. On the contrary, the standards represent the broad consensus of public health experts and behavioral scientists based upon empirical findings in the fields of medicine, psychology and epidemiology that sustained crowding, especially under adverse conditions in closed institutions, causes demonstrable mental and physical injury and that such standards represent a minimum necessary to maintain mental and physical health.[12]

Before outlining the effects of crowding, it must be emphasized that prolonged crowding in prisons or other closed institutions is significantly different from the short-term crowding experienced by commuters, or those riding in an elevator. Most investigations indicate that crowding is reasonably well tolerated for short periods, especially when an individual has the power to terminate confinement or sees a finite limit to this condition. It

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[12]Walker, Jr., B., & Gordon, T., "Health and High Density Confinement in Jails and Prisons", *Federal Probation*, March 1980, at 153-58. [hereinafter cited as "Health and High Density Confinement"] It should be noted that correctional officials have not found that these minimum space standards conflict with their needs. See note 3, *supra*.

is also true that feelings of strong personal-social identity and a sense of belonging may neutralize the impact of the crowding.[13]

Crowding in prisons, however, is an entirely different matter. As researchers have found, long term crowding in prison must be viewed in light of the circumstances inherent in forced confinement – the crowding is prolonged, intense, inescapable, with strangers, and often under adverse conditions.[14] It is under these circumstances that the inquiry as to the effects of crowding must be undertaken. Thus, the effects of overcrowding on prisoners cannot be evaluated in a vacuum, but require analysis of the totality of circumstances and conditions.

B. Long Term Overcrowding Causes Increased Levels Of Physical Illness And Disease.

It is a well established principle of public health that long term high density confinement results in higher levels of communicable disease and illness. The broad consensus of medical judgment is opposed to prolonged close confinement because of the "danger of [the] spread of acute infectious diseases. . . ."[15]

As a result of research into the causes of and distribution of disease, it is now known that the common respiratory diseases, influenza, the streptococcal diseases, and the pneumonias are

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[13]Clements, C., "Crowded Prisons: A Review of Psychological and Environmental Effects", 3 *Law and Human Behavior* 217 (1979) [hereinafter cited as "Crowded Prisions"].

[14]*Id.* at 220.

Cox, V.C., Paulus, P.B., McCain, G. & Schkade, J.K., "Field Research on the Effects of Crowding in Prisons and on Offshore Drilling Platforms", in *Residential Crowding and Design* (1979) [hereinafter cited as "Effects of Crowding in Prisons"].

Sundstrom, Eric, "Crowding as a Sequential Process: Review of Research on the Effects of Population Density on Humans", *in Human Response to Crowding* 31, 33, 52, 67 (1978).

[15]"Medical Implications of Space Allowances", supra note 6 at 2.

spread through person to person contact, or by articles soiled by discharges from the nose and mouth, or discharges into the air by breathing, coughing, sneezing, spitting, or even talking.[16] The closer the range the greater the probability of the organism being deposited on another person; conversely increasing the space between individuals decreases that probability.[17]

Concern about the medical ramifications of crowding was evident as early as World War I when the Secretary of War appointed a Medical Board consisting of the Surgeon General and other doctors of international reputation to examine the housing plans for the U.S. Army. The Medical Board found that:

> Septic pneumonia was practically uncontrollable when men are too closely crowded. The same, no doubt, is true of other respiratory diseases to a greater or lesser extent. The most serious of these are cerebral spinal meningitis, pneumonia, tuberculosis, measles, mumps, scarlet fever and whooping cough. All of these are transmitted by direct contact and the degree of transmission is inversely in proportion to the distance between individuals.[18]

The Board recommended to the Secretary of the Army: ". . .that the cubic air space per man be increased to 500 lcubic feet; . . . . We believe that no sanitary advice is sound which does not provide for at least 500 feet of air space per man.[19]

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[16]Riley, R.L., "Airborne Infection", 57 *The American Journal of Medicine* 466-75 (1974).

"Health and High Density Confinement", *supra* note 12.

[17]*Id.*

[18]"Medical Implications of Space Allowances", *supra* nota 6. Encl. 2: Extracts from Report of Medical Board on Housing plans, Appointed by the Secretary of War, June 12, 1917.

[19]*Id.* 500 cubic feet is approximately 60 square feet of floor space with an 8 foot ceiling.

In World War II the Army Epidemiological Board transmitted a special resolution to the Secretary of the Army:[20]

> It can be positively stated that the greater the crowding the greater is the risk of an epidemic of serious proportions.
> The Board indorses the action of the Surgeon General in reiterating the desirability of restricting crowding to that level produced by the allotment of sixty (60) square feet per man.

Again in 1952 the Armed Forces Epidemiological Control Board (successor to the Army Epidemiological Board) was asked to review its position on the space allowance of 60 square feet per person. The views of the Board were stated by Dr. Colin MacLeod of New York University Medical School and President of the Board:[21]

> The recommendations of the Epidemiological Board in January 1943 called attention strongly to the danger of crowding as an important factor in increasing the spread of diseases transmitted by way of the respiratory tract. The statements are as true today as when they were made in 1943. It is strongly urged that the principles laid down then be followed in any plan for housing of our troops.
>
> While the dangers are greatest with respect to the respiratory diseases, it should also be emphasized that the overloading of general facilities incident to crowding in barracks also increases the danger of spread of diseases transmitted by other routes, especially the gastro-intestinal diseases.

Prison and other forms of institutional crowding also have been shown to be positively related to an increased incidence of

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[20]"Medical Implications of Space Allowances" *supra* note 6, at Encl. 1, page 3.

[21]*Id.* at Exhibit B.

communicable disease.[22] Millar and Alexander report that an epidemic of meningococcal disease (10,000 recruits) at the U.S. Naval Training Center in San Diego, California in 1963 was enhanced by overcrowded facilities. At the time of the outbreak, the available space in the residential units was about twenty-five (25) square feet per sailor, which was less than half the minimum amount of space prescribed by the Bureau of Medicine and Surgery of the U.S. Navy. After the population was reduced to provide 55-60 square feet per person, no new cases of the disease were reported.[23]

Prison overcrowding also accelerates the development and spread of such potentially fatal diseases as pulmonary tuberculosis.

> The population of a large city prison is an ideal seed bed for tuberculosis. The prison inmates live under continuous mental stress, frequently in overcrowded, and poorly ventilated quarters in close contact with each other.[24]

A rate of tuberculosis among inmates in an overcrowded Arkansas prison 6.5 times greater than in the general population has been documented.[25] The same study reported that half of the inmates found to have tuberculosis from 1975 to 1977 had entered the prison uninfected, and that infected former inmates were a significant source of infection for the community at large.

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[22]Annual Report, Commission on Acute Respiratory Disease. Armed Forces Epidemiological Board. Washington, D.C. (1951-1952).

[23]Millar, J.W. & Alexander, C.E., "Epidemiology of Meningococcal Disease," in *Proceedings of the First Symposium on Aerobiology* (1963). [meningitis is an infection of the membranes (the meninges) that cover and protect the brain and spinal cord]

[24]Abeles, H. & Fiebes, M.E., "The Large City Prison: A Reservoir of Tuberculosis", 101 *American Review of Respiratory Disease* 706-09 (1970).

[25]Stead, W.W., "Undetected Tuberculosis in Prison" 240 *Journal of the American Medical Association* 2544-2547 (1978).

King and Geis[26] have reported on the influence of crowding on the transmission of tuberculosis on a tier of the Cook County (Illinois) jail. They found that following diagnosis of advanced tuberculosis on one inmate, 23% of the exposed inmates were reported to be tuberculin positive. Three months later 71% of the inmates were reported to be tuberculin positive, indicating exposure of the crowded tier population to the disease.

In addition to the well documented fact that overcrowding encourages disease transmission, [27] disease rates are also higher because the stress induced by crowding tends to increase susceptibility to disease.[28] The National Academy of Sciences reports that the social stresses caused by crowding produce physiological disturbances that in turn decrease resistance to disease.[29]

The spread of communicable disease in prisons assumes even greater importance in view of the fact that there is a very high incidence of communicable disease among inmates entering our correctional institutions. The American Medical Association found that of some 641 prisons examined in 1976 positive laboratory results for tuberculosis were found in 12.4%; for

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[26]King, L., & Geis, G., "Tuberculosis Transmission in a Large Urban Jail" 237 *Journal of the American Medical Association* 790-93 (1977).

[27]Studies by Walker and Gordon, public health experts, of several outbreaks of epidemics in jails and prisons indicate that infectious diseases and symptoms such as diarrhea, dysentery, etc. are often traceable to overtaxed and unsanitary food service and/or plumbing defects caused in part by the burden placed on toilet and bathroom fixtures when the institution exceeds the capacity for which it was designed. "Health and High Density Confinement in Jails and Prisons', *supra* note 12, at 57.

[28]Rogers, M., Devandra, D. & Reich, P., "The Influence of the Psyche and the Brain on the Immunity and Disease Susceptibility – A Critical Review," *Psychosomatic Medicine* 41, 147-164 (1979).

[29]National Academy of Sciences, *Rapid Population Growth* (1971).

syphillis in 5.9% and for hepatitis in 30%.[30] Such diseases are serious, highly infectious, and if untreated could be rapidly transmitted to other inmates, especially under conditions of overcrowding.

C. Long Term Overcrowding Causes Increased Rates of Stress and Mental Disorders

While many environmental factors cause stress under certain conditions, and any given factor is not uniformly stress inducing, long term crowding in a prison setting has generally been found to be a profound streess inducer.

In a recent nationwide, systematic study of the effects of prison crowding on inmate behavior, sponsored by the U.S. Law Enforcement Assistance Administration, the researchers concluded:[31]

> high degrees of sustained crowding have a wide variety of negative psychological and physiological effects including increased illness complaint rates, higher death and suicide rates, and higher disciplinary infraction rates. . .
>
> increases in inmate population without concomittant increases in housing facilities produce a number of

[30]Anno, B.J., *Analysis of Inmate/Patient Profile Data* at 107 (1977); King, L., *Management of Common Medical Problems in Correctional Institutions* (1979) (American Medical Association Program to Improve Medical Care in Correctional Institutions). ["It is estimated that 7% of the total U.S. population are infected with tubercule bacillus. In contrast, reported percentages of tuberculin skin test positive individuals in correctional institutions include 15% in Cook County Jail, 16% in New Orleans Parish Prison, and 26% in one Arkansas prison."]

[31]McCain, G., Cox, V.C., & Paulus, P.B., *The Effect of Prison Crowding on Inmate Behavior; Final Report* 1, 117 (1980). (LEAA Grant 78-NI-AX-0019) [hereinafter cited as "The Effect of Prison Crowding"].

> very undesirable effects as indicated by disproportionate increases in disciplinary infraction rates, suicide rates[32] rates of death by violence, and death rates of inmates over 50.

It must be noted that the prisoners in the institutions studied were confined to their cells only during sleeping hours.[33] It is not unreasonable to assume that the stress related effects of crowding would be even more pronounced when prisoners are confined to their cells for a large portion of their waking hours.

Two other researchers in reviewing the evidence on the effects of crowding likewise concluded:[34]

> Crowding has a substantial negative effect on a variety of aspects of mental health.

They found that crowding causes increased psychiatric symptoms, a lack of positive affect, nervous breakdowns, alienation and low self-esteem.[35]

Crowding has also been found to cause stress related disease.[36] These stress related conditions are evidenced

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[32]The researchers' study of the Texas Department of Corrections indicated that increased crowding was accompanied by a "dramatic increase in suicide rates." Over the fourteen year period from 1964 to 1978 the prision population increased 91%, while suicide rates increased over 1000%. *Id.* at 104.

[33]*Id.* at 143.

[34]Galle, E.R. & Gove, W.R., "Overcrowding, Isolation and Human Behavior: Exploring the Extremes in Population Distribution", *Social Demography* 95, 116-17 (1978).

[35]*Id.*

[36]Gove, W.R. Hughes, M., & Galle, O.R., "Overcrowding in the Home: An Empirical Investigation of its Possible Pathological Consequences", 44 *American Sociological Review* 59, 74 (1979).

Booth, A. & Cowell, J., "The Effects of Crowding Upon Health", 17 *Journal of Health and Social Behavior* 204, 216 (1976).

physiologically by elevated blood pressure,[37] and increased sweating.[38] Double celled prisoners also showed consistently and significantly higher illness complaint rates than single celled prisoners, another indication of high levels of stress.[39]

It also appears that prisoners do not adapt to crowding;[40] over time tolerance to crowding actually decreases and the need for personal space increases.[41]

Crowding is believed to be stress inducing for several reasons:

1. Crowding necessarily reduces a person's ability to control his personal space and the environment around him.[42]
2. Crowding decreases a person's ability to control social interaction and thereby induces feelings of helplessness, depression and deterioration in health.[43]

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[37]D'Atri, D.A. & Ostfeld, A.M., "Crowding: Its Effects on the Elevation of Blood Pressure in a Prison Setting", *Preventive Medicine* 1975, at 550 [hereinafter cited as "Crowding: Its Effect on the Elevation of Blood Pressure"].

[38]"Effects of Crowding in Prisons", *supra* note 14.

[39]"The Effect of Prison Crowding", *supra* note 31.

[40]*Id.* at 136.

[41]"Effects of Crowding in Prisons", *supra* 14.

[42]Sommer, R., *Personal Space: The Behavioral Basis of Design* (1969);

Schmidt, D.E. & Keating, J.P., "Human Crowding and Personal Control: An Integration of the Research," 86 *Psychological Bulletin,* 680, 686, 691 (1979) [hereinafter cited as "Human Crowding and Personal Control"].

[43]Baron, R.M. & Rodin, J., "Personal Control and Crowding Stress: Processes Mediating the Impact of Spatial and Social Density", in *Advances in Environmental Psychology* (1978).

Baum, A., & Valins, S., *Architecture and Social Behavior: Psychological Studies in Social Density* (1977).

"Human Crowding and Personal Control", *supra* note 42 at 602.

3. Crowding induces a fear-reaction produced by too many strange "others" in confined areas.[44]

4. Crowding leads to suppressed hostility, which in turn causes higher elevations of blood pressure.[45]

Other studies have indicated that crowding stress is much more likely to occur, and to be more pronounced where crowding is present under conditions of threats to personal security, when resources are scarce, when the environment is "closed" and when large amounts of time must be spent in the crowded setting.[46] Unfortunately, it is in an overcrowded prison where all of these stress inducing factors are often found. Hence the level of stress caused by sustained prison crowding tends to be very high.

The mental health of prisoners is likely to be seriously jeopardized by such prolonged overcrowding. It is all too often a fact of prison life that prisoners with identified psychological disturbances are often confined to their cells without care or treatment for 22 to 24 hours per day simply for safekeeping.[47]

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[44]Paulus, P.B., "Crowding", in P.B. Paulus (Ed.), *Psychology of Group Influence* (1980).

[45]D'Atri, D.A., "Psychophysiological Response to Crowding", *Environment and Behavior* 7, 237-52 (1975).

"Crowding: Its Effect on the Elevation of Blood Pressure" *supra* note 37, at 550-55, 566 (1975).

[46]Schopler, Jr. & Stokols, D., *A Psychological Approach to Human Crowding* (1976).

"Crowded Prisons", *supra* note 13, at 220.

[47]"Crowded Prisons", *supra* note 13, at 221-2;

Pugh v. Locke, 406 F.Supp, 318, 324 (M.D. Ala. 1976), aff'd, *Newman v. Alabama,* 559 F.2d 283 (5th Cir. 1977), cert. denied *Alabama v. Pugh,* 438 U.S. 781 (1978).

Comptroller General of the United States, *Jail Inmates Mental Health Care Neglected; State and Federal Attention Needed* (1980).

Comptroller General of the United States, *Prison Mental Health Care Can be Improved by Better Management and More Effective Federal Aid"* (1979).

Prisoners who are psychotic, suicidal, and otherwise disturbed, often find that their problems are ignored because of the pressures on available staff who have to spread themselves more thinly among the increased population. Some prisoners will respond to this overcrowding by passive withdrawal, others by aggressive acting out—both habitual response patterns that may be destructive to the personality.[48]

Thus, prison crowding not only increases stress related pathology, but undermines efforts to treat psychological problems. Too few staff are available to identify, much less adequately serve those prisoners who need counseling or more intensive forms of psychological treatment.

D. Prolonged Overcrowding Leads To Increased Rates of Aggressive and Violent Behavior.

The increased stress, tension, fear, anxiety and hostility created by crowding finds an outlet in several ways. Some prisoners will try to "escape" from a stressful, constantly intrusive situation by emotional withdrawal, apathy, and resignation.[49] However, others will try to stake out a personal territory in a more aggressive manner and may form protective groups or cliques to defend their "turf", leading to group as well as one-on-one confrontations.[50]

That the stress caused by overcrowding leads to an increase in aggressive behavior, an increase in the level of prison violence,

Wilson, Rob, "Who Will Care for the 'Mad and Bad'", 5, 6, *Corrections Magazine* (1980).

[48]"Crowded Prisons", *supra* note 13, at 222.

[49]*Id.* at 223.

[50]*Id.* See also Ibrahim, A.I., "Deviant Sexual Behavior in Men's Prisons," *Crime and Delinquency* 38, 42 (1974) ["Prison overcrowding expedites the formation of cliques or gangs . . . with the old timers taking advantage of the newcomers, especially through sexual exploitation. It is extremely difficult for administrators and guards to keep an eye on what goes on in these crowded cells. . ."]

including rape, extortion, assault and murder, and ultimately to prison riots, is a social fact acknowledged by behavioral scientists, correctional officials, and the courts.

A well known psychologist, Edwin I. Megargee, concluded from a study of several prisons:[51]

> In a prison setting where crowded conditions are chronic rather than temporary, and where people prone to antisocial behavior are gathered together, there is a clear association between restrictions on personal space and the *occurrence of disruptive and aggressive behavior.* (emphasis added)

These findings have been confirmed in several other studies. As crowding heightens the frequency of interpersonal friction, and as available space decreases, disruptive behavior in prison increases. Given the inability to perform other coping responses, such as constructive activities, aggression becomes a more likely strategy.[52]

Nacci, Teitelbaum and Prather[53] (1977) researchers for the U.S. Bureau of Prisons, surveyed all of the federal correctional institutions and concluded that there were "very dangerous side effects" caused by overcrowding. Their data indicated that those prisons that were most overcrowded relative to their capacity had the highest disciplinary infraction rates (high rates of assaultiveness), especially institutions housing young offenders.

McCain, Cox and Paulus[54] also found in their studies of federal prisons and six state prisons, that high degrees of sustained crowding consistently resulted in higher disciplinary in-

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[51]Megargee, Edwin I. "Population Density and Disruptive Behavior in a Prison Setting", in *Prison Violence* (1976).

[52]"Crowded Prisons, *supra* note 13, at 223.

[53]Nacci, P.L., Teitelbaum, H.E., & Prather, J., "Population Density and Inmate Misconduct Rates in the Federal Prison System." *Federal Probation* 26-31 (1977).

[54]"The Effect of Prison Crowding", *supra* note 31, at 117, 19.

fraction rates. Double celled prisoners had significantly higher rates of institutional rule violations than single celled inmates, indicating greater adjustment problems.

Correctional experts concur that overcrowding increases tension and leads to violence.[55] See also Commission on Accreditation for Corrections, *Manual of Standards for Adult Correctional* Institutions, § 4142 (1977).

Overcrowding has been cited as one of the major causes of the Attica uprising.[56] And recently the Attorney General of the State of New Mexico, in a report on the New Mexico prison riot of February 2 and 3, 1980, stated that the long term overcrowding was one of the principal underlying causes of that tragic episode.[57]

The courts have also recognized the direct link between overcrowding and violence. *Battle* v. *Anderson,* 564 F.2d 388, 395 (10th Cir. 1977) ["There is a direct correlation between overcrowding and violence. . . . Defendants acknowledge that the 1973 McAlester riot was caused by the then existing overcrowded conditions"], *Newman* v. *Alabama,* 559 F.2d 283, (5th Cir. 1977) ["The State concedes. . . that the overcrowding was primarily responsible for and exacerbated all the other ills of the penal systm."]; *Campbell* v. *McGruder,* 580 F.2d 521, 536 n. 27 (D.C. Cir. 1978) ["these and other courts have recognized that overcrowding and double celling are often prime causes of

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[55]National Advisory Commission on Criminal Justice Standards and Goals, Washington, D.C., 35 (1973). ["Overcrowding exacerbates health hazards and also contributes to tensions."]

[56]State of New York, Department of Correctional Services, *Strategic Plan,* 1980-1985 (1980).

[57]*Report of the Attorney General on the February 2 and 3, 1980 Riot at the Penitentiary of New Mexico* 1, 8 (1980). [Throughout its history, the Penitentiary of New Mexico has suffered from neglect. . . Lack of space, adequate programming, and understaffing have all been part of the prison's tradition. . . (The) dramatic increase of 200 inmates in the three months prior to the riot. . . undoubtedly added to the high level of tension. . .", pp. 1, 8]

the tension, sexual assaults, . . . that characterize so many jails and prisons."] *William* v. *Edwards,* 547 F.2d 1206, 1211 (5th Cir. 1977)

The physical and mental harms caused by overcrowding are exacerbated by conditions of forced idleness – that is, when prisoners have few constructive jobs, programs or outlets for their energies. The absence of meaningful work, education and vocational programs, recreation and cultural/social resources "fosters a lowering of self-esteem, loss of skills, and inevitable institutionalization."[58] As the American Correctional Association has acknowledged, "If the prisoners, are committed to inactivity. . . and mental stultification, then the desire within them to escape or to throw off the shackles of these unnatural restraints will become so strong that security facilities and procedures will be breached sooner or later."[59] Ironically, while forced idleness aggravates the effects of the overcrowding, the overcrowding itself in turn increases the level of idleness by diluting resources and programs.

II. THE FINDINGS OF THE DISTRICT COURT IN THIS CASE THAT PROLONGED OVERCROWDING, UNDER THE TOTALITY OF CONDITIONS OF CONFINEMENT AT THE S.O.C.F., WHERE TWO MEN WERE FORCED TO SHARE A 63 SQUARE FOOT CELL FOR MOST OF THE DAY FOR LONG PERIODS OF TIME, AND WHERE SUCH OVERCROWDING PRODUCED MENTAL AND PHYSICAL INJURY VIOLATED CONTEMPORARY STANDARDS OF DECENCY REQUIRED BY THE EIGHTH AMENDMENT SHOULD BE AFFIRMED.

This court held in *Estelle* v. *Gamble,* 429 U.S. 97, 103 (1976) and *Hutto* v. *Finney,* 437 U.S. 678 (1975), that the prohibition against cruel and unusual punishment embodies ". . .civilized

[58]"Crowded Prisons", *supra* note 13, at 222.

[59]American Correctional Association, *Manual of Correctional Standards* 366 (1966).

standards, humanity and decency. . . ." and includes the right to be free from those punishments which are "incompatible with 'the evolving standards of decency that mark the progress of a maturing society,'" citing *Trop* v. *Dulles,* 356 U.S. 86, 100-101 (1958). The Eighth Amendment protects a prisoner from penal measures which involve the "infliction of unnecessary suffering [as to be] inconsistent with contemporary standards of decency." *Estelle* v. *Gamble,* 429 U.S. at 103. See also, *Gregg* v. *Georgia,* 428 U.S. 153, 173 (1976) ["purposeless and needless imposition of pain and suffering"].

To ascertain the content of the Eighth Amendment's "evolving standards of decency" this Court and the lower courts have been guided by statutes and minimum standards developed by professional organizations such as the APHA.[60] In *Estelle* v. *Gamble,* 429 U.S. at 103-4, n.8, the Court relied in part upon standards of the National Advisory Commission on Criminal Justice Standards and Goals, The National Sheriffs' Association (Standards for Inmates' Legal Rights, and the United Nation's Congress on Prevention of Crime and Treatment of Prisoners). In *Hutto* v. *Finney,* 437 U.S. at 683, the Court cited the standars of the National Academy of Sciences in assessing the adequacy of the diet provided to prisoners in Arkansas' isolation cells. Other courts have also looked to such standards, including APHA standards, to ascertain whether contemporary standards of decency have been met. *Battle* v. *Anderson, supra,* 564 F.2d

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[60]In *Bell* v. *Wolfish,* 441 U.S. 520, n.27 (1979), this Court stated that the standards of professional organizations were not determinative to an analysis of the meaning of the Due Process Clause. The Court also found that double bunking two prisoners for short periods of time (generally less than 30 days) in 75 square foot rooms for sleeping purposes only did not cause genuine hardship or privation. The case at bar, however, presents an entirely different situation. First, it involves the Eighth Amendment, which incorporates contemporary standards of decency, and thus is an area in which this Court has properly relied upon the standards of professional organizations. Secondly, the overcrowding found by the district court here did in fact cause extreme hardship and physical mental injury.

at 395; *Ramos* v. *Lamm, supra,* slip op. at 18; *Gates* v. *Collier,* 390 F. Supp. 482, 486 (N.D. Miss. 1975), aff'd 525 F.2d 965 (5th Cir. 1976); *Smith* v. *Sullivan,* 611 F.2d 1039, 1045 (5th Cir. 1979); *Burks* v. *Walsh,* 461 F.Supp. 454, 483, (D.C. Mo. 1978), *aff'd, sub. nom. Burks* v. *Teasdale,* 603 F.2d 59 (8th Cir. 1979); *Palmigiano* v. *Garrahy,* 443 F.Supp. 956, 961 n.2, 979-980 n.30 (D.R.I. 1977).

As we have demonstrated above, the minimum space standards developed by the APHA and other organizations do reflect contemporary minimum standards of civilization and decency, because they are based upon substantial empirical evidence that sustained overcrowding causes unnecessary physical and mental injury.

As the Court's opinions have demonstrated, where a prison condition or practice causes the unnecessary infliction of pain and suffering, that is, pain and suffering which serves no penological purpose, *Estelle,* v. *Gamble,* 429 U.S. at 103, it will not be tolerated. In the case of severe and long term crowding which has been shown to contribute to or cause unnecessary mental and physical suffering or injury, this Court rightfully held such crowding to be violative of the Eighth Amendment. In *Hutto* v. *Finney,* 437 U.S. at 686-688, this Court upheld a lower court ruling that the punitive isolation cells in Arkansas' prisons were unconstitutional relying in part upon the length of confinement and the continued overcrowding among other factors which when taken as a whole, demonstrated that the conditions violated the Eighth Amendment.

Similarly, in *Battle* v. *Anderson,* 564 F.2d 388 (10th Cir. 1977), the Tenth Circuit upheld a lower court finding that the Oklahoma State Penitentiary was unconstitutionally overcrowded where two men were kept for long periods of time in cells of 35-40 square feet. The Court required that each prisoner be provided with at least 60 square feet in a cell and 75 square feet in a dormitory, relying upon the standards of the APHA in formulating a remedy. The Court specifically found that "just as 'water, fire protection, air and food are necessities of life'. . .

the mi' 'mum space to call one's own is a primary psychological necessity. . . ." The Court emphasized that the record in that case demonstrated:

> There is no doubt that the overcrowding increases the inciden[c]e of both infectious communicable diseases (e.g., flu, hepatitis, tuberculosis, etc.), and stress related diseases (e.g., rashes, asthma, hypertension, etc.)
>
> 564 F.2d 388, 398.

Similarly, in *Campbell* v. *McGruder,* 580 F.2d 521, 536 (D.C. Cir. 1978), the court found that based on the facts of that case the overcrowding was likely "to impair the mental and physical health" of the prisoners and therefore was enjoined.

It is clear therefore, that the courts correctly have not hesitated to enjoin long term crowding in prisons where the facts of the particular case, when taken as a whole, demonstrate that it is causing unnecessary and unjustifiable physical or mental suffering or injury to prisoners.

In the case at bar, the district court found that prisoners at the Southern Ohio Correctional Facility generally were confined two men to a 63 square foot cell. Each cell contained basically a double bunk bed, a storage cabinet and a toilet and sink, leaving each man with approximately 24 square feet of floor space. Men were generally confined to those small spaces for at least fourteen (14) hours per day although a substantial percentage were locked in for all but four to six hours per week.

The Court carefully assessed the totality of conditions after viewing the prison and hearing testimony from the prison psychologist, several expert witnesses, prison officials and prisoners.

The Court made findings of fact about the effects of the overcrowding based on the totality of conditions at the prison, findings which are not challenged in this Court.

1. The prolonged overcrowding had caused physical and mental injury to the prisoners. 434 F.Supp. at 1020.

2. The overcrowding caused an increase in tensions and aggressive and antisocial tendencies. 434 F.Supp. at 1017.

3. Although a large percentage of the prisoners had mental disorders the "services rendered [by the single psychologist and social worker]. . . have been substantially denied to a number of inmates due to the double celling." 434 F.Supp. at 1016.

4. The medical staff had not been increased since the days of single celling. . . and there "is evidence. . . of a denial of what inmates consider to be appropriate medical treatment. . ."

5. There were not enough jobs to go around and many inmates who were assigned to jobs worked only an hour or so a day. 434 F.Supp. at 1015.

6. Homosexuality, enforced and consensual, extortion and criminal activity increased with double celling in proportion to the increase in population. 434 F.Supp. at 1020.

The Court held that while double celling was "undoubtedly permissible as a temporary measure", 434 F.Supp. at 1021, under the totality of circumstances at Lucasville, where double celling was a condition of "relative permanance" and prisoners were locked in their cells for most of the day every day for prolonged periods and where the overcrowding had caused physical and mental injury, it was unconstitutional to continue to house two men in a sixty square foot cell.

We believe that the district court's holding – that long term crowding under the totality of the circumstances existing at Lucasville violated the Eighth Amendment – where such crowding was found to have caused physical and mental suffering was correct. Because the Court found that there was no penological justification for the overcrowding, and that it was

causing needless injury, the Court correctly applied this Court's analysis of the Eighth Amendment in *Estelle, Gregg,* and *Hutto, supra* to prohibit the continued overcrowding at the prison.

Of equal importance the district court assessed the adverse effects that the totality of conditions resulting from overcrowding had on the physical and mental health of the prisoners at Lucasville. The court properly recognized that standards of professional organizations were an important source to consider in determining contemporary standards of decency. And the court correctly concluded that minimum space requirements are essential to prevent the unnecessary infliction of physical and mental suffering on prisoners which results from prolonged overcrowding.

CONCLUSION

For the foregoing reasons the *amici* urge the Court to affirm the opinion of the district court.

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